

SABINE CORP.

IBLA 84-517

Decided February 26, 1986

Appeal from decision of the Colorado State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer C-38080.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:
Applications: Attorneys-in-Fact or Agents
After a simultaneous oil and gas lease drawing the failure of a first-drawn applicant to file an offer in accordance with 43 CFR 3112.6-1 necessitates rejection of the offer. Where the offer form has been signed by one who is designated as an attorney-in-fact for the offeror, either a copy of the document granting the power of attorney must be submitted or a reference must be made to a qualifications file where such authorization has previously been filed, together with a statement the power of attorney is still valid, over the personal handwritten signature, in ink, of the prospective lessee.

APPEARANCES: Russell W. Porritt, II, Esq., Dallas, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

The Sabine Corporation (Sabine) has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated March 29, 1984, rejecting its noncompetitive oil and gas lease offer, C-38080, because a valid power of attorney did not accompany the application as required by 43 CFR 3112.6-1. Sabine's application to lease was drawn with first priority for parcel CO-314 in the May 1983 simultaneous oil and gas lease drawing. In accordance with 43 CFR 3112.6-1(a) on February 8, 1984, the Colorado State Office, BLM, transmitted the lease offer documents and request for rental to Sabine. In the transmittal letter, BLM stated in part:

If the lease is signed (or the payment made) by an attorney-in-fact, the regulations require that the power of attorney contain particular provisions and that a copy of the power of attorney accompany the offer or payment. 43 CFR 3112.6-1. If the offer is to be signed or payment made by an attorney-in-fact, we suggest you contact this office to insure compliance with the regulations and avoid unnecessary technical rejection of the application or offer. (Telephone No. (303) 837-5551).

Appellant's signed offer to lease was received by BLM on March 1, 1984. The offer was signed by J. E. West as attorney-in-fact for appellant, and a reference was made on the application which stated: "Power of Attorney is on file under # C-0123326 and is still in effect. Attorney-in-Fact has no direct or indirect interest herein."

In its March 29, 1984, decision BLM rejected appellant's lease offer stating:

43 CFR 3112.6-1(b)(1)(i) (as found at 48 F.R. 33680, July 22, 1983) states:

An attorney-in-fact may sign the lease offer and pay the first year's rental only if: (i) the power of attorney prohibits the attorney-in-fact from filing offers on behalf of any other participant.

The copy of the Power of Attorney attached to the Offer to Lease does not indicate that the attorney-in-fact is prohibited from filing offers for other participants.

In its statement of reasons for appeal, appellant contends the power of attorney attached to its offer to lease was an older power of attorney not intended for use in conjunction with the filing of lease offers with BLM. Appellant states a reference was made on its offer to lease to serial number C-0123326, which it asserts, contains a power of attorney executed in conformity to 43 CFR 3112.6-1(b)(1)(i), previously filed in a proper BLM office. Further, appellant has attached a copy of the power of attorney which recites that its attorney-in-fact is limited "to act for and in behalf of and for the sole and exclusive benefit of Sabine and not in behalf of any other person in whole or in part."

[1] The Departmental regulation at issue, 43 CFR 3112.6-1(b)(2), states in relevant part:

An attorney-in-fact signing a lease offer on behalf of the prospective lessee shall file, together with the offer, a copy of his/her power of attorney, or where such power of attorney has previously been filed in a proper BLM office, a reference to the serial number of the record in which it has been filed, together with a statement that it is still valid, over the personal handwritten signature, in ink, of the prospective lessee. (Emphasis added.)

While appellant asserts it complied with the aforementioned regulation by reference to serial number C-0123326, the record does not contain a statement over the personal hand written signature, in ink, of the prospective lessee that the power of attorney is still valid. As stated earlier, the reference by serial number to appellant's previously filed power of attorney appears on its oil and gas lease applications above the signature of J. E. West, appellant's attorney-in-fact. The regulation contemplates that an officer of appellant's corporation sign a statement indicating the continuing validity

of the attorney-in-fact's power of attorney. Thus, appellant has failed to provide the statement required by the regulation.

The applicable regulation, 43 CFR 3112.6-1, is clearly stated and expresses a distinct rule. Where the rule at issue exists as a Departmental regulation, we cannot depart from its clearly expressed meaning and must apply it to appellant's situation. This Board has no authority to treat as insignificant, or to declare invalid, a duly promulgated regulation of this Department. Altex Oil Corp., 61 IBLA 240 (1982). This Board has recently affirmed that defects in oil and gas lease offers relating to improved or irregular uses of powers-of-attorney are of substantial weight so as to require rejection. See Satellite 8211104, 89 IBLA 388 (1985); Satellite 8307193, 85 IBLA 357 (1985).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Franklin D. Arness
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

